

VIRGINIA WASTE MANAGEMENT BOARD

**ORDER BY CONSENT
ISSUED TO**

PAGE COUNTY, VIRGINIA

**Battle Creek Landfill - Permit No. 579
Page County, Virginia**

SECTION A: Purpose

This is a Consent Order issued under the authority of Section 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Page County, Virginia, to resolve certain apparent violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10, *et seq.*

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Act.

3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code §§ 10.1-1401 and 10.1-1184.
4. "DEQ" or "the Department" means the Virginia Department of Environmental Quality, an administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "DEQ-VRO" means DEQ's Valley Regional Office.
6. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
7. "VSWMR" means the Waste Board's Solid Waste Management Regulations, 9 VAC 20-80-10, *et seq.*
8. "BCLF" or "the Facility" means Page County's Battle Creek Landfill, Permit No. 579.
9. "The County" or "the Permittee" means Page County, Virginia.
10. "The Permit" means Solid Waste Permit No. 579, issued to Page County on February 21, 1995.
11. "NWSV" means National Waste Services of Virginia, the County's contract operator of the BCLF.
12. "TPD" means tons per day of solid waste disposed of at the BCLF.
13. "NOV" means Notice of Violation.

SECTION C: Findings of Facts and Conclusions of Law

1. Page County is the owner and permittee of the BCLF. The BCLF is located along the U.S. Highway 340 Bypass, approximately 0.7 miles southwest of the intersection of U.S. Route 211 and U.S. Route 615 near Battle Creek, Virginia. The BCLF is the subject of the Permit. The BCLF is also subject to regulation under the VSWMR.
2. On August 1, 2002, staff of DEQ-VRO and DEQ-Central Office conducted an inspection of the BCLF to evaluate the Facility's compliance with the Permit and the VSWMR. Based on observations made during the inspection, on August 30, 2002, DEQ issued NOV No. WS-02-08-VRO-030 to Page County citing the following apparent violations of the Permit and the VSWMR:

- a. Failure to keep the working face of the BCLF as small as practicable, as specified in the Permit and determined by the tipping demand for unloading, in apparent violation of 9 VAC 20-80-250.C.13.f of the VSWMR and Attachment II-1, Section 4.2.G of the Permit;
- b. Failure to apply daily cover consisting of six inches of compacted soil or other approved material upon all exposed solid waste prior to the end of each working day in apparent violation of 9 VAC 20-80-250.C.2.c of the VSWMR and Attachment II-1, Section 4.4.C of the Permit;
- c. Failure to control disease vectors using techniques appropriate for the protection of human health and the environment in apparent violation of 9 VAC 20-80-250.C.4 of the VSWMR and Attachment II-1, Section 4.4.C of the Permit;
- d. Failure to maintain the integrity of the intermediate cover system (BCLF Cells 3 and 6) in apparent violation of 9 VAC 20-80-250.C.2.d of the VSWMR and Attachment II-1, Section 4.4.E of the Permit;
- e. Failure to maintain the run-on/runoff control systems designed and constructed in accordance with subdivision B.6 in apparent violation of 9 VAC 20-80-250.C.11 of the VSWMR, Attachment II-1, Section 5.4 of the Permit, Attachment III-1 (Design Plan Drawings 501 & 602) of the Permit and Condition 1.B.5 of the Permit.
- f. Causing a discharge of pollutants (sediment) into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC §1251 et seq.), including, but not limited to, the VPDES requirements and Virginia Water Quality Standards (9 VAC 25-260-10 et seq.) in apparent violation of 9 VAC 20-80-250.C.12.a of the VSWMR;
- g. Failure to provide adequate numbers and types of properly maintained equipment for operation in apparent violation of 9 VAC 20-80-250.C.6 of the VSWMR;
- h. Failure to make provision for substitute equipment within 24 hours of the main equipment becoming inoperable or unavailable in apparent violation of 9 VAC 20-80-250.C.6 of the VSWMR;
- i. Failure to satisfy solid waste exemption criteria (debris pile) and accepting materials offering an undue hazard to landfill personnel or the landfill operation (debris pile) in apparent violation of 9 VAC 20-80-160.C and 9 VAC 20-80-250.C.1 of the VSWMR, respectively;
- j. Slopes of the completed landfill exceeding 3:1 over areas of solid waste (BCLF Cells 1 and 5) in apparent violation of 9 VAC 20-80-250.B.15 of the VSWMR and Attachment III-1, Design

Plans, Sheet 304 of the Permit and Attachment III-2, Design Report, Section 8.5 of the Permit;

- k. Failure to maintain adequate vegetative cover (intermediate cover & soil stockpile) in apparent violation of Attachment III-1, Design Plans, Sheet 302 (Note #5) of the Permit and Attachment III-1, Design Plans, Sheet 302 (Note #4) of the Permit. Maintaining an unapproved soil stockpile in apparent violation of Attachment II-1, Section 4.4.H of the Permit and Attachment III-1, Design Plan Sheets of the Permit;
 - l. Failure to initiate final cover construction when any area of the landfill attains final elevation and within 90 days after such elevation is reached and when an additional lift of solid waste is not to be applied within one year (Cells 1 & [5]), in apparent violation of 9 VAC 20-80-250.C.2.e of the VSWMR and Attachments XII-1 and XIII-1, Closure and Post-Closure Plan, Subpart I.A.1 of the Permit;
 - m. Failure to limit access to a solid waste disposal facility only when an attendant is on duty and only during daylight hours in apparent violation of 9 VAC 20-80-250.C.3 of the VSWMR;
 - n. Failure to maintain equipment log books in apparent violation of Attachment II-1, Section 4.3 and Attachment, Section 5.0 of the Permit;
 - o. Acceptance of unauthorized wastes in the white goods area (one compressed gas cylinder, one broken lead acid / wet cell battery and three steel drums with both ends intact) in apparent violation of 9 VAC 20-80-70, 9 VAC 20-80-710.A, 9 VAC 20-80-250.C.17.g, 9 VAC 20-80-680 and 9 VAC 20-80-630 of the VSWMR;
 - p. Failure to maintain random inspection logs in apparent violation of 9 VAC 20-80-250.C.1.c of the VSWMR and Attachment II-1, Section 1.2 of the Permit; and,
 - q. Modification of a solid waste management facility without a permit issued by the Director in apparent violation of 9 VAC 20-80-480.A of the VSWMR.5 [Facility records showed that the landfill had been receiving waste at an average rate of approximately 1000 tons per day].
- 3. By letter dated September 27, 2002, NWSV submitted a request for an amendment of the Permit. The amendment request identified certain operational and equipment modifications proposed to accommodate a projected waste disposal rate at BCLF not to exceed 1,500 TPD.
 - 4. By letter dated October 11, 2002, DEQ's Office of Waste Permitting returned the amendment request to NWSV for additional information and because it was not submitted by Page County as the permittee for the BCLF. Thereafter, the application was retransmitted by the County with additional information. This revised application included amendments to accommodate a projected waste disposal rate at BCLF not

to exceed 1,200 TPD calculated on a monthly average basis. Page County asserts this modification was final by operation of law on January 2, 2003. DEQ asserts the application was not complete and has since been superseded by the County's permit modification request dated April 10, 2003.

5. On September 30, 2002, staff of DEQ-VRO conducted a compliance inspection at the BCLF. In the report of the inspection, transmitted to Page County on October 8, 2002, the inspector identified that waste was exposed through the intermediate cover on the eastern face of Cells 1, 3, 5 and 6 in apparent violation of 9 VAC 20-80-250.C.2 of the VSWMR.
6. On October 18, 2002, staff of DEQ-VRO conducted a compliance inspection at the BCLF. In the report of the inspection, transmitted to Page County on October 24, 2002, the inspector identified that waste was exposed through the intermediate cover on the eastern face of Cells 1 and 5 and on the western faces of Cells 3 and 6 in apparent violation of 9 VAC 20-80-250.C.2 of the VSWMR.
7. On November 13, 2002, Gannett Fleming prepared a report concluding that final elevation had not been reached in cells 1 and 5, and that approximately 30' remains before final elevation is achieved.
8. Between October 19, 2002, and January 16, 2003, staff of DEQ-VRO conducted seven compliance inspections at the BCLF. In each of those inspections, DEQ staff found that adequate manpower and equipment were in place at the BCLF.
9. As of the January 16, 2003, inspection, the violations that remained unresolved were the violations referenced above under Paragraphs 2.a, 2.d, 2.j, 2.k, 2.l and 2.q.
10. On March 6, 2003, staff of DEQ-VRO conducted an inspection of the BCLF to evaluate the Facility's compliance with the Permit and the VSWMR. Based on observations made during the inspection, on March 21, 2003, DEQ issued NOV No. WS-03-03-VRO-033 to Page County citing the following apparent violations of the Permit and the VSWMR:
 - a. Maintaining a working face greater than 2,500 square feet in apparent violation of 9 VAC 20-80-240.B and 9 VAC 20-80-480.A of the VSWMR and Attachment II-1, Section 4.2.G of the Permit;
 - b. Consistently receiving waste tonnages in excess of what DEQ contends is allowable under the permit (250 TPD), in apparent violation of 9 VAC 20-80-240.B and 9 VAC 20-80-480.A of the VSWMR and Attachment II-1, Section 4.2.G of the Permit;
 - c. Maintaining an unapproved soil stockpile in apparent violation of Attachment II-1, Section 4.4.H of the Permit and Attachment III-1, Design Plan Sheets of the Permit;

- d. Slopes of the completed landfill exceeding 3:1 (based on visual estimation) over areas of solid waste (BCLF Cells 1 and 5) in apparent violation of 9 VAC 20-80-250.B.15 of the VSWMR and Attachment III-1, Design Plans, Sheet 304 of the Permit and Attachment III-2, Design Report, Section 8.5 of the Permit;
 - e. Failure to maintain adequate vegetative cover (intermediate cover & soil stockpile) in apparent violation of Attachment III-1, Design Plans, Sheet 302 (Note #5) of the Permit and Attachment III-1, Design Plans, Sheet 302 (Note #4) of the Permit.
 - f. Failure to initiate final cover construction when any area of the landfill attains final elevation and within 90 days after such elevation is reached and when an additional lift of solid waste is not to be applied within one year (Cells 1 & 5), in apparent violation of 9 VAC 20-80-250.C.2.e of the VSWMR and Attachments XII-1 and XIII-1, Closure and Post-Closure Plan, Subpart I.A.1 of the Permit; and
 - g. Placement of municipal waste outside the cell footprint, in apparent violation of Attachment II-1, Title 4.2.G of the Permit, and 9 VAC 20-80--240.B.
11. On April 10, 2003, DEQ received a permit modification application from Page County detailing proposed changes and alternations to the landfill, including increasing the capacity of the landfill within its existing footprint; increasing the tons per day of waste it may receive; increasing final slope and grades; and including the second soil pile already onsite. DEQ is reviewing this permit modification application.
12. On April 16, 2003, DEQ received a permit modification request from Page County removing the reference to square footage with respect to the landfill's working face, tons per day, and waste compaction rate. DEQ is reviewing this permit modification request.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1455, orders Page County, and Page County agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Page County, and Page County voluntarily agrees, to pay a civil charge of **\$30,000** within 30 days of the effective date of the Order in settlement of the apparent violations, with the exception of apparent violations concerning tons of waste received per day and size of the landfill's working face as detailed in Section C, items 2.a and q, and 10. a and b cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Page County's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Page County, for good cause shown by Page County, or on its own motion after notice and opportunity to be heard.
2. This Order resolves only those apparent violations specifically identified herein, specifically excluding apparent violations concerning tons of waste received per day and size of the landfill's working face as detailed in Section C, items 2.a and q, and 10. a and b, cited in this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any unresolved, additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Page County agrees not to challenge the jurisdictional allegations in this Order, but does not admit the factual allegations or agree with legal conclusions contained herein. The Department and Page County agree that the actions undertaken by Page County in accordance with this Order do not constitute an admission of any liability by Page County. Page County does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Fact and Conclusions of Law contained in Section C of this Order.
4. Page County asserts that slopes at the landfill do not exceed the Permit requirements. Page County also asserts that the Permit does not restrict the landfill to 250 TPD or limit the size of the working face to 2,500 square feet.
5. Page County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order or the Permit.
6. Page County declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000, *et seq.*, and the Virginia Waste Management Act and it waives the right to any

hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

7. Failure by Page County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Page County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Page County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Page County shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
 - d. the timetable by which such measures will be implemented and the anticipated date full compliance will be achieved.

Failure to so notify the Regional Director within 72 hours of learning of any condition above, which Page County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Page County. Notwithstanding the foregoing, Page County agrees to be bound by any compliance date which precedes the effective date of this Order.

12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Page County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Page County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature below, Page County voluntarily agrees to the issuance of this Order. Page County denies the allegations of violations contained in this Order, and asserts that it is agreeing to the issuance of this Order for the sole purpose of resolving the allegations contained therein, with the exception of those allegations contained in Section C, items 2.a and q, and 9.a and b of this Order.

And it is so ORDERED this ____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Page County voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2003, by _____, who is
(name)

_____ of Page County, Virginia, on behalf of the County.

(title)

Notary Public

My commission expires: _____.

APPENDIX A
SCHEDULE OF COMPLIANCE
PAGE COUNTY
BATTLE CREEK LANDFILL
PERMIT NO. 579

1. Page County's April 10, 2003 permit modification application seeks a modification of the Permit that would, should it be approved by DEQ, allow certain landfill final slopes to exceed the grade currently in the Permit, including those portions of Cells 1 and 5 that DEQ asserts presently exceed those requirements. If this portion of the permit modification is not approved, the County shall regrade **within 90 days** of final permit action by DEQ any portion of the slopes of Cells 1 and 5 found to be exceeding grade requirements in the Permit.

2. Page County's April 10, 2003 permit modification application seeks a modification of the Permit that would, should it be approved by DEQ, allow the placement of additional waste in the areas of BCLF Cells 1 and 5. If this portion of the permit modification is not approved, the County shall commence final cover construction in those areas **within 90 days** of reaching final elevation under the current Permit. Until such time as the areas either receive additional lifts of waste in accordance with either the current Permit or any permit modification granted by DEQ, or are closed, in accordance with the Permit and the VSWMR, the County shall, by **June 1, 2003**, complete such measures as are necessary to establish adequate vegetative cover on the areas and repair any erosion over the intermediate cover.